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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Conditions of service of the ad litem judges of the International Tribunal for the Former Yugoslavia

Report of the Secretary-General

I. Introduction

1. In his report to the General Assembly on financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (A/55/517), the Secretary-General indicated that, since its inception, the Tribunal had undergone rapid and continuous expansion. Accordingly, as part of the medium- and longer-term measures designed to improve the operations of the Tribunal, it was proposed to expand the trial capacity of the Tribunal by introducing the use of ad litem judges. The proposals were based on the study on the operation of the Tribunal submitted as part of the report on the operation of the International Tribunal for the Former Yugoslavia (A/55/382-S/2000/865).

2. In his report, the Secretary-General stated that the Security Council had yet to take a decision on matters related to changes to the Statute of the International Tribunal for the Former Yugoslavia with respect to establishing a pool of ad litem judges in order to expand the Tribunal's trial capacity (A/55/517, para. 3). At the same time, the Secretary-General provided, in annex IX to the report, estimated additional resource requirements for the use of six ad litem judges, pending a decision by the Council.

3. The Advisory Committee on Administrative and Budgetary Questions, in paragraph 8 of its report (A/55/642), indicated that it would revert to the administrative and budgetary aspects of the matter after action by the Security Council.

4. In the case of ad litem judges for the International Criminal Tribunal for Rwanda, the Secretary-General, in his report to the General Assembly at its fifty-fifth session on the financing of that Tribunal, indicated that the Rwanda Tribunal judges were of the view that a provision for ad litem judges was not necessary to serve current needs (A/55/512, annex IX, para. 2). The Advisory Committee also noted that the judges of the International Criminal Tribunal for Rwanda were not actively considering the introduction of ad litem judges (A/55/643, para. 25).

5. The Security Council, acting under Chapter VII of the Charter of the United Nations, by its resolution 1329 (2000) of 30 November 2000, decided to

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establish a pool of ad litem judges in the International Tribunal for the Former Yugoslavia and to enlarge the membership of the Appeals Chambers of both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The Council also decided to amend articles 12, 13 and 14 of the Statute of the International Tribunal for the Former Yugoslavia and articles 11, 12 and 13 of the Statute of the International Criminal Tribunal for Rwanda. The Statute of the International Criminal Tribunal for Rwanda was not amended to include a provision for the utilization of ad litem judges.

6. Under the new article 12 of the Statute of the International Tribunal for the Former Yugoslavia, "Composition of the Chambers", the Chambers shall be composed of 16 (previously 14) permanent independent judges and a maximum at any one time of 9 ad litem independent judges (previously none). The article also stipulates that seven of the permanent judges shall be members of the Appeals Chamber. The revised article 14, "Officers and members of the Chambers", includes provisions to the effect that two of the judges to be elected or appointed in accordance with article 12 of the Statute of the International Criminal Tribunal for Rwanda will be members of the Appeals Chamber. Under article 13 ter, after the Secretary-General invites nominations and the Security Council establishes a list of not less than 54 candidates, the General Assembly shall elect 27 ad litem judges of the Tribunal for a term of four years. Ad litem judges may be appointed by the Secretary-General, upon the request of the President of the Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years.

7. Pursuant to paragraph 4 of Security Council resolution 1329 (2000), the Secretary-General would make practical arrangements for the election of two additional judges and a pool of 27 ad litem judges. Pursuant to paragraph 2 of the resolution, the Secretary-General's letter inviting nominations was sent out on 15 January 2001, with 16 March 2001 set as the deadline for receiving nominations.

8. In his report (A/55/517/Add.1), the Secretary-General set out the additional requirements of the International Tribunal for the Former Yugoslavia for the proposed use of six ad litem judges for 2001. Provisions related to the proposed two additional judges for the Appeals Chamber were included in the report on the financing of the International Criminal Tribunal for Rwanda (A/55/512/Add.1).

9. The Chairman of the Advisory Committee on Administrative and Budgetary Questions, when presenting the Committee's recommendations on the financing of the International Tribunal for the Former Yugoslavia, indicated that the Advisory Committee had decided to defer consideration of the revised estimates contained in document A/55/517/Add.1 until the General Assembly had approved the conditions of service of the ad litem judges. It was also noted that the judges of the International Criminal Tribunal for Rwanda had not yet decided to support the appointment of ad litem judges (A/C.5/55/SR.35).

10. The General Assembly, in its resolution 55/225 of 23 December 2000, taking note of Security Council resolution 1329 (2000), decided to revert, at its resumed fifty-fifth session, to the consideration of resource requirements for the implementation of the modifications to the Statute of the International Tribunal for the Former Yugoslavia approved by the Council, without prejudice to the nomination and election of the ad litem judges.

11. The present report has been prepared further to General Assembly resolution 55/225, with respect to the statement of the Advisory Committee referred to in paragraph 9 regarding the conditions of service of the ad litem judges.

II. Background information on the adoption of the conditions of service for the judges of the International Tribunals

12. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and adopted its Statute. Article 13, paragraph 4, of the Statute of the International Tribunal for the Former Yugoslavia provides that the terms and conditions of service shall be those of the judges of the International Court of Justice. By its resolution 955 (1994) of 8 November 1994, the Security Council decided to establish the International Criminal Tribunal for Rwanda and adopted its statute. Article 12,

paragraph 5, of the Statute of the International Criminal Tribunal for Rwanda provides that the terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia.

13. In his report to the General Assembly at its fifty-third session (A/C.5/53/11), the Secretary-General made proposals for revised salaries and revised pensions for the members of the International Court of Justice, and corresponding revisions to the salaries and pensions of the judges of the International Tribunals in the light of what the Assembly might determine for the members of the International Court of Justice. The General Assembly also had before it the report of the Secretary-General on the conditions of service for the judges of the two International Tribunals that had been presented to the Assembly at its fifty-second session (A/52/520).

14. In section VIII, paragraph 1, of its resolution 53/214 of 18 December 1998, the General Assembly approved revisions to the conditions of service and compensation for the members of the International Court of Justice. In paragraphs 4 and 5 of the same resolution, the Assembly approved the recommendations of the Advisory Committee on the emoluments, pensions and other conditions of service of the judges of the International Tribunal for the Former Yugoslavia and the judges of the International Criminal Tribunal for Rwanda and also approved the travel and subsistence regulations for the judges of the International Tribunals contained in annex III to the report of the Secretary-General (A/52/520).

III. Adoption of changes to the Statute of the International Tribunal for the Former Yugoslavia

15. In his comments on the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the Secretary-General, in the context of his comments on the use of ad litem judges, had stated that should recourse be made to the utilization of past judges who had retired from either of the two International Tribunals or the International Court of Justice, the General Assembly might wish to consider related remuneration arrangements (A/54/850, para. 90). The Assembly might wish to take this into account when considering the proposed conditions of service of judges. Particular attention in this regard is drawn to paragraph 21 below.

16. Under article 13 ter, paragraphs 1 (e) and 2, of the Statute of the International Tribunal for the Former Yugoslavia, ad litem judges shall be elected for a term of four years and they shall not be eligible for re-election.

17. During their term, ad litem judges will be appointed by the Secretary-General, upon the request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. It should be noted that an ad litem judge may never be appointed to serve on any trials during his or her term. Conversely, he or she may be appointed to serve on any number of trials (subject to a cumulative time limit). If he or she is appointed to serve on more than one trial, there is no requirement that the appointments must be immediately consecutive, one upon the other. There might therefore, and probably will, be breaks in service.

18. Article 13 quater, paragraph 1 (a), of the Statute of the International Tribunal for the Former Yugoslavia specifies that during the period in which they are appointed to serve in the International Tribunal, ad litem judges shall benefit from the same terms and conditions of service, mutatis mutandis, as the permanent judges of the International Tribunal. However, ad litem judges would be entitled to receive benefits only once they had been appointed to serve on one or more trials, and if they were so appointed, they would be so entitled only for as long as and in respect of the period that they were so appointed.

19. Further to General Assembly resolution 53/214, revisions to the emoluments of the members of the International Court of Justice and the judges of the International Tribunals were effected as of 1 January 1999. The Secretary-General would thus propose that the conditions of service approved by the General Assembly for the judges of the International Tribunals and the travel and subsistence regulations for the judges of the International Tribunals contained in annex III of document A/52/520 should be applied to the ad litem judges.

20. If this approach were to be adopted, the following conditions of service would be applicable to ad litem judges:

(a) *Emoluments*. With regard to emoluments:

(i) Ad litem judges shall receive an annual salary of US$ 160,000, prorated for length of service;

(ii) The floor/ceiling measures that are applicable to the members of the International Court of Justice and judges of the International Tribunal for the Former Yugoslavia shall also apply to the emoluments of ad litem judges serving at The Hague;

(b) *Travel costs and subsistence benefits*. Ad litem judges shall be entitled to payment of travel expenses and subsistence benefits as set forth in the travel and subsistence regulations for judges of the International Tribunal for the Former Yugoslavia and the judges of the International Criminal Tribunal for Rwanda contained in annex III of document A/52/520;

(c) *Education allowance*. Ad litem judges shall be entitled to education allowance in accordance with the provisions contained in section II of General Assembly resolution 53/209 of 18 December 1998. In this respect, the General Assembly approved, as from the school year in progress on 1 January 1999, increases in the maximum reimbursement levels in seven currency areas, as well as other adjustments to the reimbursement of expenses under the education grant, as contained in paragraph 190 of the report of the International Civil Service Commission.[1] For the United States dollar area, the amount of maximum admissible educational expenses was increased to $20,748 and the maximum grant to $15,561, with the amount of the special education grant for each disabled child to be equal to 100 per cent of the revised amount of maximum admissible educational expenses for the regular education grant. Accordingly,

(i) Ad litem judges shall be reimbursed, up to a ceiling of $15,561, for the actual cost of educating their children in respect of each child each year up to the award of the first recognized degree and for one related return journey per year in respect of each child from the place of scholastic attendance, when outside the Netherlands, to The Hague;

(ii) Ad litem judges shall be reimbursed, up to a ceiling of $20,748, for the actual cost of educating their disabled children in respect of each child each year up to the award of the first recognized degree and for one related return journey per year in respect of each child from the place of scholastic attendance, when outside the Netherlands, to The Hague;

(d) *Survivors' lump sum benefit*. In paragraph 7 of its resolution 54/240 A of 23 December 1999, the General Assembly approved the recommendations of the Advisory Committee on the note of the Secretary-General (A/C.5/54/30) on conditions of service for the judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia concerning the establishment of a lump-sum payment for survivors of the judges. Accordingly, in the event of the death of judges of the International Tribunals, survivors would be compensated in the form of a lump-sum payment equivalent to one month of base salary for each year of service, subject to a minimum of one month and a maximum of four months. In the case of ad litem judges, the Secretary-General would propose that, in the event of the death of an ad litem judge, survivors would be compensated in the form of a lump-sum payment equivalent to one month of base salary for each year of service, subject to a minimum of one month and a maximum of three months;

(e) *General conditions*. The following general conditions should apply to ad litem judges: Ad litem judges may not exercise any political or administrative function, or engage in any other occupation of a professional nature, during their term of appointment in office. The entitlements and allowances listed above shall be conditional on the residence of the ad litem judge at The Hague;

(f) *Medical insurance*. Ad litem judges, for the duration of their appointment, may participate in the medical insurance plan appropriate to their duty station under the same conditions applicable to the judges of the International Tribunals.

21. Ad litem judges shall not be entitled to pension benefits. A judge who has retired from the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the International Court of Justice and is the recipient of a pension therefrom would not continue to receive that pension during the time he or she served as an ad litem judge.

22. Any period of service as an ad litem judge would not be counted towards and added for years of

qualifying service that a judge might have with the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the International Court of Justice for pension purposes.

23. Concerning the establishment of disability benefits for ad litem judges, it is recognized by the Organization that there is a need to make provision for disability payment in respect of a service period. Therefore, should an ad litem judge be found unable to perform his or her duties because of ill-health or disability, he or she would be entitled to receive payment of his or her salary for the service period. There would be no liability beyond that period.

24. By virtue of the limitation on their length of appointment, and taking into account the conditions applied to the permanent judges, ad litem judges would not be eligible for payment of relocation allowance.

25. In section VIII, paragraph 7, of its resolution 53/214, the General Assembly decided that the emoluments, pensions and other conditions of service for the members of the International Court of Justice, the judges of the International Tribunal for the Former Yugoslavia and the judges of the International Criminal Tribunal for Rwanda should be reviewed at the fifty-sixth session of the Assembly. In the event that adjustments in the conditions of service and compensation for the members of the International Court of Justice and for the judges of the International Tribunals are proposed, such adjustments would also be applied, where appropriate, to ad litem judges.

IV. Conclusions and recommendations

26. The General Assembly may wish to approve the conditions of service for ad litem judges as proposed in paragraphs 18 to 25 above.

Notes

[1] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 30* and corrigendum (A/53/30 and Corr.1).